

State Records Committee Decisions and Orders

Nova Dubovik
Executive Secretary
April 19, 2017



Who's that Executive Secretary



- Executive secretary appointed annually
 - Not a voting member



State
Records
Committee

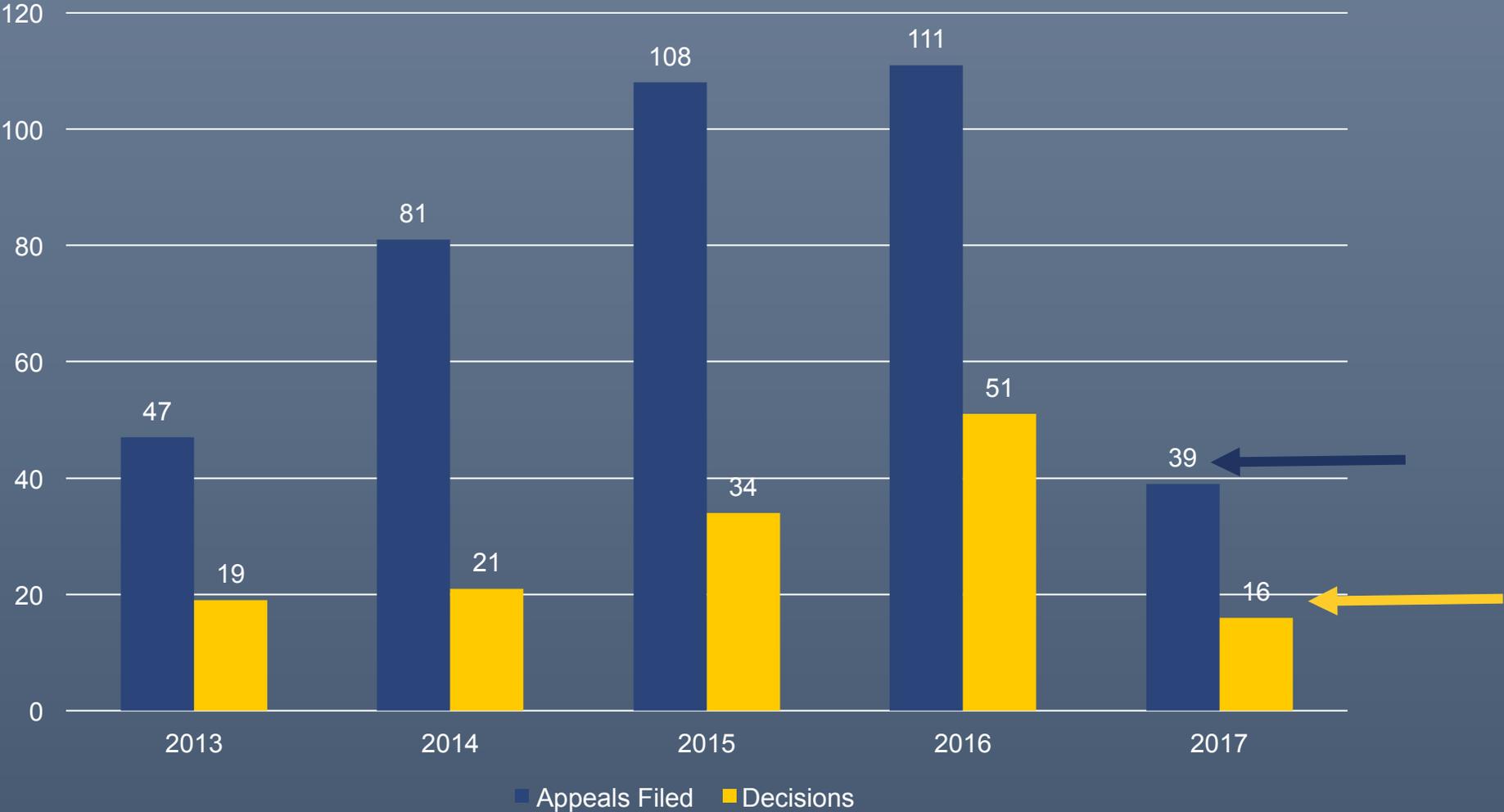


Duties

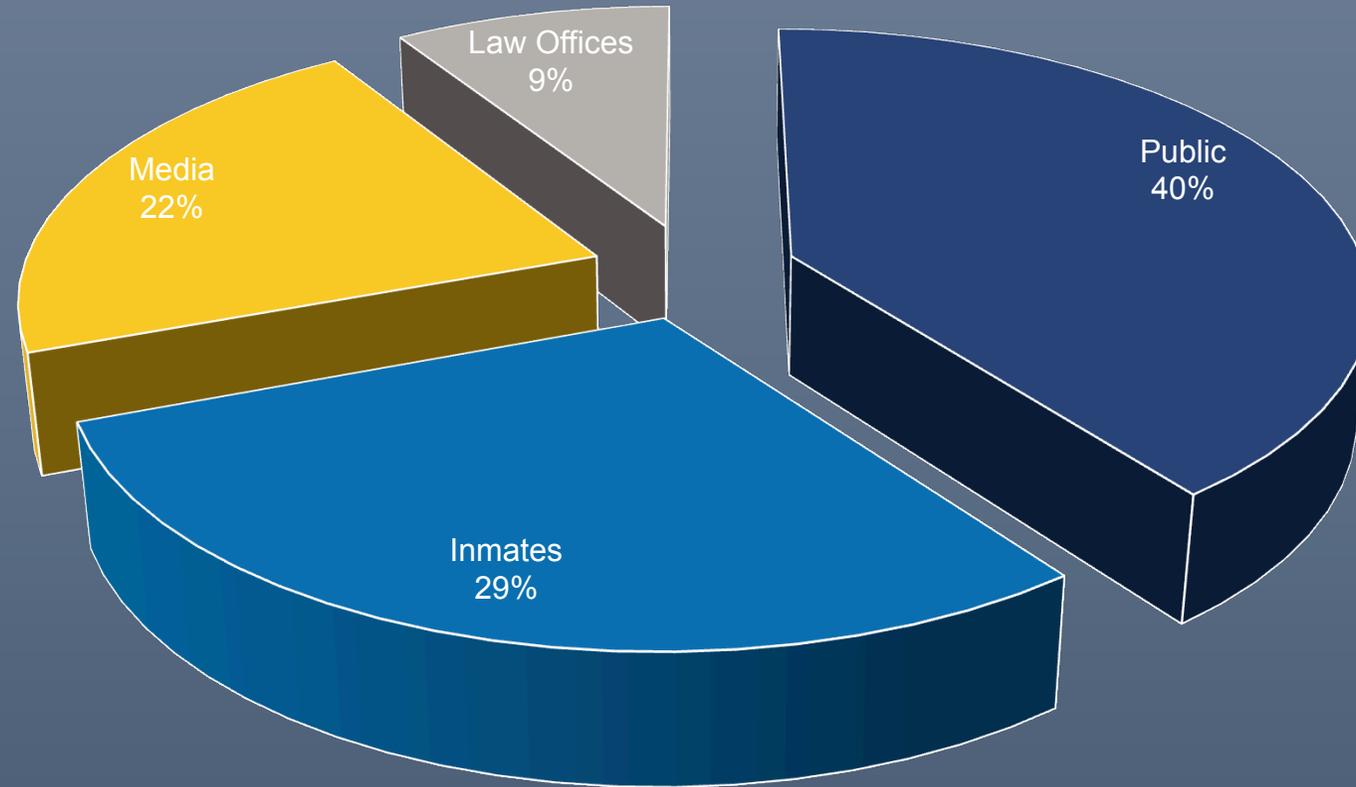
- Required to meet quarterly
- Hear appeals
 - 5 minutes opening statement
 - 20 minutes testimony
 - 5 minutes closing statement
- Review and approve schedules for retention schedules and disposal of records
- Post on the Public Notice Website

Appeals

Five Year History



2016 Demographics of Requesters



Public Inmates Media Law Offices

2017 Appeals and Decisions

- Open Records Portal
- Transparency
- Public is more aware
- Resources

Interesting 2016-2017 Decisions and Orders

- 17-02: ACLU v. SL Co. & SLCPD
- 17-11: Britt Miller v. Utah Transit Authority
- 17-12: Libertas Institute v. Utah Tax Commission
- 17-13: Utah Rivers Council v. Department of Natural Resources, Division of Water Resources

17-02: ACLU v. SL Co. & SLCPD



<http://www.sltrib.com/news/4810650-155/utah-records-committee-votes-to-release?page=2>

17-02: *ACLU v. SL Co. & SLCPD*

- Ruling:
 - Release would not interfere or deprive a right to a fair trial
 - Citizen Review Board publicly released a written detailed report of the camera footage
 - Used the weighing provision
 - Public interest favoring access is greater than the interest favoring restriction to access



17-11 *Miller v. Utah Transit Authority (UTA)*

UTA refuses to release data on cost of 'union buster' consultants

By LEE DAVIDSON (/staff/lee-davidson/) | The Salt Lake Tribune [CONNECT](#) (/staff/lee-davidson/)

First Published Sep 14 2016 02:42PM • Last Updated Sep 15 2016 11:24 AM

Agency accused of spending thousands to keep TRAX supervisors from voting to unionize.



(<https://www.sltrib.com/site/sltrib/pages/print-friendly.csp?id=353024>)

[Share This Article](#)

The Utah Transit Authority's TRAX supervisors voted this week against unionizing; at the same time, the agency denied an open-records request seeking to show how much taxpayer money it spent on "union busting" consultants seeking that result.

The supervisors rejected joining Teamsters Local 222 on a 25-16 vote held Monday and Tuesday. Other TRAX operators are already represented by the separate

<http://www.sltrib.com/news/4353024-155/trax-supervisors-vote-against-joining-union>

17-11 *Miller v. Utah Transit Authority (UTA)*

- Ruling:
 - Copyright law restricts copying, distributing, and lending of records
 - Copyright law does not restrict viewing of records



17-12 *Libertas Institute v. Utah Tax Commission*

Utah won't release details on Amazon tax deal, says info would give advantage to competitors

By LEE DAVIDSON (/staff/lee-davidson/) | The Salt Lake Tribune [CONNECT](#) (/staff/lee-davidson/)

First Published Jan 17 2017 11:54AM • Last Updated Jan 17 2017 10:58 pm



(/csp/mediapool/sites/dl.common.streams.StreamServer.cls?
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&CONTENTTYPE=image/jpeg)

[http://www.sltrib.com/news/4830230-155/utah-denies-open-records-request-for-
details](http://www.sltrib.com/news/4830230-155/utah-denies-open-records-request-for-details)

17-12 *Libertas Institute v. Utah Tax Commission*

- Commission's arguments:
 - Protected
 - Anticipated litigation
- Petitioner's argument:
 - Should be made public and redact nonpublic information

17-12 *Libertas Institute v. Utah Tax Commission*

- Ruling:

- Amazon did not provide a claim of confidentiality (63G-2-309)

- Cited: *Fife v. Orem City*, Case No. 140400007 (Dec. 22, 2014)

- No anticipated litigation

- Cited: *Schroeder v. Utah AGO*, 2015 UT 77

- *S. Utah Wilderness Alliance v. Automated Geographic Reference Ctr.*, 2008

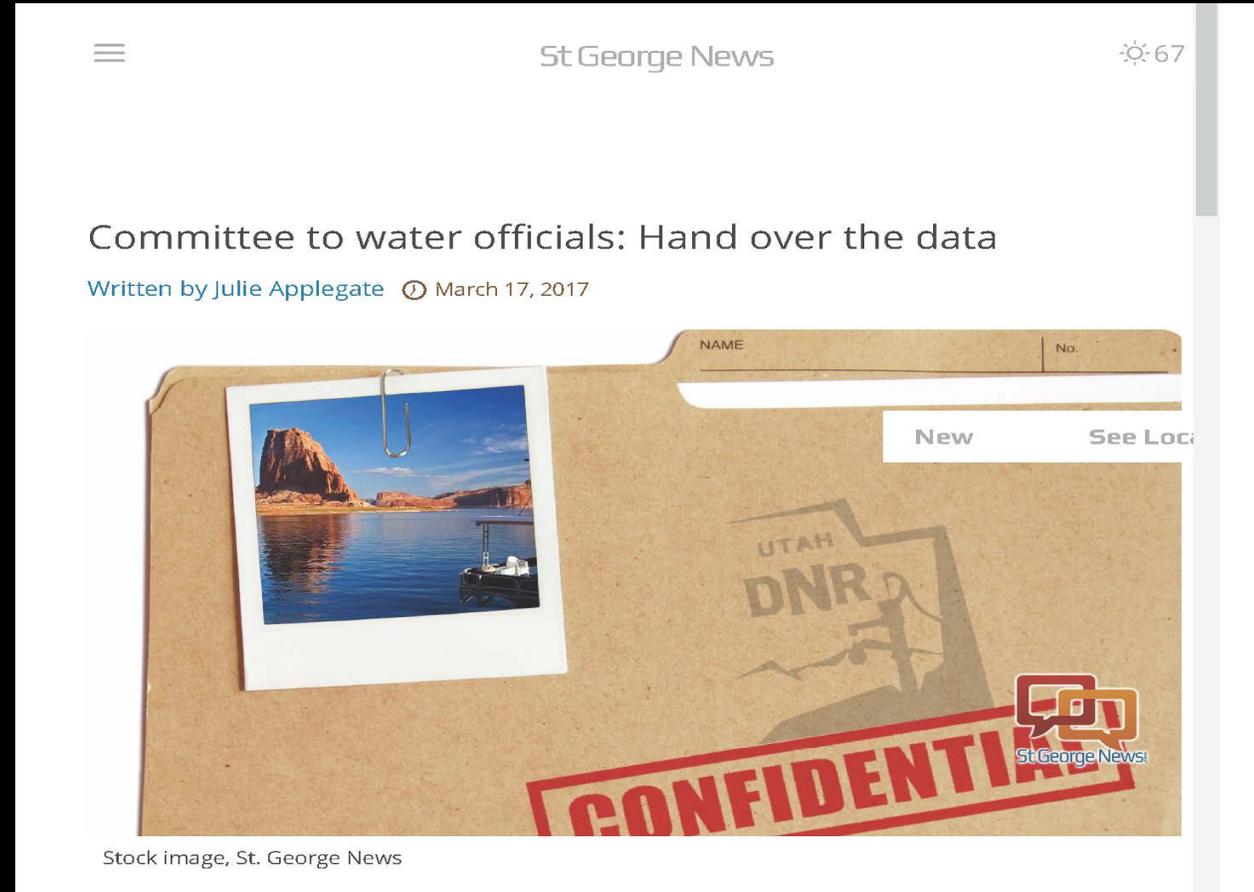
- UT 88

- Reviewed in camera

- Redact specific personally identifiable info and attachments
 - Remainder disclosed to public



17-13 Utah Rivers Council v. Division of Water Resources



<https://www.stgeorgeutah.com/news/archive/2017/03/17/jla-committee-to-water-officials-hand-over-the-data/#.WNrFXkYrKuk>

17-13 *Utah Rivers Council v. Division of Water Resources*

- Ruling:
 - Database a public record



🕒 23 MAR 2017 ✎ UTAH RIVERS COUNCIL 💬 0
📁 BLOG, NEWS ARTICLE, POST SLIDER

A Win For Transparency

The State Records Committee ruled unanimously in the URC's favor over our request to acquire water use calculations made by the Utah Division of Water Resources which are used to show Utah is running out of water. For four months the Division not only refused to show us how much water Utahns are using, but their actions and arguments

Appeals not Heard

- Untimely filed
- Subject of appeal found to be appropriately classified in previous hearing involving same governmental entity
- Outside jurisdiction
- Resolved through mediation
- Incomplete

Appeals not Heard

- Verify complete package
- Timely and within jurisdiction
- Why is the Petitioner appealing
 - Access denial
 - Fee waiver denial
 - Dispute claim of extraordinary circumstances
 - Lack of response

Appeals not Heard

- Research
- Recommend
- Right to appeal



Appeals not heard

- *Patrick Sullivan v. Utah Department of Corrections,*
Appeal Request #2017-24
- *Salt Lake Tribune v. Brigham Young University PD,*
Appeal Request #2016-55

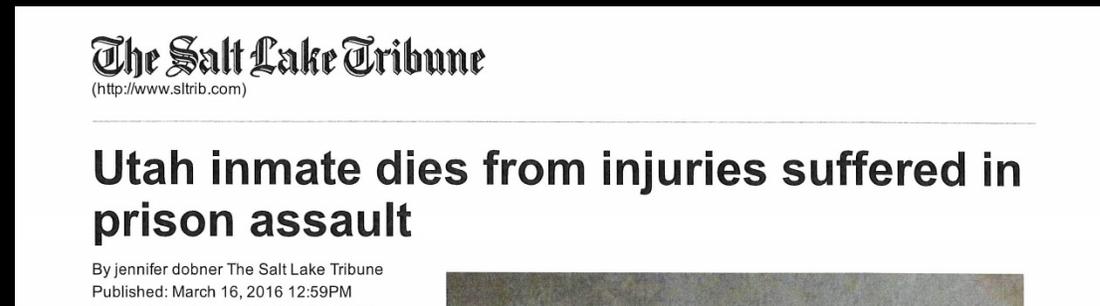
Hearing
s
Decline
d



Patrick Sullivan v. Utah Department of Corrections

- Requested surveillance video
- Denied access
- Appealed decision to CAO

Hearing
Declined



<http://www.sltrib.com/home/3665813-155/utah-inmate-dies-from-injuries-suffered>

Patrick Sullivan v. Utah Department of Corrections

- Appealed CAO decision to SRC
- Grant v. Corrections, case no. 12-10
- SRC declined hearing
 - Record series found by committee in previous hearing involving same governmental entity to be appropriately classified as private, controlled, or protected. (U.C. 63G-2-403(4)(b)(i)).



Salt Lake Tribune v. Brigham Young University PD

- Requested Police Dept. records
- Response not subject to GRAMA
- Appealed response to SRC

**Hearing
Declined**



Appeal Request #2016-55

Salt Lake Tribune v. Brigham Young University PD

- Hearing Declined
- Not a governmental entity per 63G-2-103(11)

**Hearing
Declined**

One to follow...

- The Tribune filed a complaint in Court alleging that BUYPD is subject to GRAMA
- BYU has been allowed by the court to intervene in the case and has joined the Motion to Dismiss

The Salt Lake Tribune
(<http://www.sltrib.com>)

Judge to decide whether Brigham Young University's police department must comply with Utah open records laws

By Jessica Miller The Salt Lake Tribune
Published: November 20, 2016 10:12PM
Updated: January 23, 2017 08:32PM

Regulations • The Salt Lake Tribune seeks communications between campus police and private school's Honor Code Office.

Should Brigham Young University's police department be subject to Utah's open records laws?

The law enforcement arm of the private university, owned by The Church of Jesus Christ of Latter-day Saints, has contended that it doesn't have to comply with state records laws, and the Utah Records Committee has agreed.

But The Salt Lake Tribune is scheduled to argue in court Monday that because the state granted the department full policing powers — the same as any other public law enforcement agency in Utah — it should be open to public scrutiny.

After BYU police refused to release records of communication between the department and the Mormon school's Honor Code and Title IX Offices, the records committee declined to review the newspaper's appeal. The Tribune filed a challenge to that decision in 3rd District Court.

Attorneys for the state are asking 3rd District Judge Laura Scott to toss the case, arguing that the school and its police force are private — contending that exempts the department from the Government Records Access and Management Act (GRAMA) and means the records committee doesn't have jurisdiction to consider an appeal.



(Steve Griffin | The Salt Lake Tribune) The police offices on the campus of Brigham Young University in Provo Wednesday June 1, 2016.



Other Court Rulings

- *ESPN, INC., v. University of Notre Dame Police Dept.*
Case No. 71S05-1606-MI-359 (2016)
Supreme Court of Indiana

- *Schiffbauer v. Banaszak,*
Case No. 2014-0244 (2015)
Supreme Court of Ohio

Judicial Review

- 16 pending in court
 - 12 Petitioners challenging SRC decision & Order
 - 4 Governmental Entities challenging SRC decision & Order
- Pending arguments
 - BYUPD subject to GRAMA
 - In the public interest to release (Utah Legal Clinic v. SLC) Ruling upheld
 - Hearing filed untimely

How to Find Decisions and Orders

<http://www.archives.state.ut.us>

The screenshot shows the website www.archives.state.ut.us. The page features a navigation menu with the following items: DAS HOME, ARCHIVES, BUILDING BOARD, DFCM, FINANCE, FLEET, PURCHASING, RESOURCE STEWARD, RISK, RULES, RESEARCH RECORDS, OPEN RECORDS (circled in red), RECORDS MANAGEMENT, OUTREACH & PARTNERS, STATISTICS, ABOUT US, and CONTACT US. Below the navigation menu is a large photograph of the Utah State Archives building, with the text "UTAH STATE ARCHIVES" visible on the facade. A white downward-pointing arrow is centered over the bottom of the photograph. Below the photograph, the text "WHAT'S HAPPENING" is displayed. The Windows taskbar at the bottom shows the system tray with the date and time "11:02 AM 3/2/2017".



Government records belong to the citizens of the state, who have a legal right to open and fair access. A cadre of access specialists is available to help with any questions.

 **Records Laws**
Link to records laws, local records ordinances and policies, and judicial decisions.

 **Records Ombudsman**
Get help with making or responding to records requests and appeals; discover transparency resources.

 **Certified Records Officers**
Identify records officers for each governmental entity, and their training certification status.

 **Open Records Portal**
Submit a records request (GRAMA request) to a governmental entity.

 **Public Notice Website**
Post or find public information and notices of open and public meetings and other government

 **State Records Committee**
Appeal records denial or learn about the State Records Committee functions and decisions.

Utah Division of Archives and Records Service

State Records Committee



The State Records Committee is a public body that hears appeals of records access denials under GRAMA and authorizes retention schedules for government records.

Next meeting: **February 9, 2017** at 9 AM, at the Utah State Archives, 346 South Rio Grande Street, Salt Lake City, UT. See the [Public Notice Website](#) for details, minutes, and scheduled hearings.

- [Governance](#)
- [Decisions and Orders](#)
- [How to File an Appeal](#)
- [What to Expect on Hearing Day](#)
- [Current Appeals](#)
- [Previous Appeals](#)
- [Records Retention Schedules Under Review](#)
- [About the State Records Committee](#)
- [Forms for GRAMA Requests, Responses, and Appeals](#)
- [Annual Reports: PDF](#)

To file an appeal with the Committee, write to:

Nova Dubovik
346 S. Rio Grande



State Records Committee Appeal Decision Summaries, 2016-2017



Follow the case number link for the full decision and order.

View decisions and orders from:

Search Decisions and Orders:

Case Number	Case Title/Participants	Records Sought	Ruling
16-01	Patrick Sullivan vs. Utah Attorney General's Office	Records from the Attorney General's Office. Appeal was in regard to the delay in delivery.	Appeal Denied
16-02	Jordanelle Special Services District vs. Office of the Utah State Auditor	All documents and other records, including all communications between the Office ... and any other person, that relate to the 'Standstill Agreement' Additionally, all documents and other records, including all communications, received from any person as part of the Utah State Auditor's Audit of JSSD.	Appeal Denied See also court case ruling



Thank you!

Contact Nova Dubovik, ndubovik@Utah.gov, 801-531-3834



Thank you!

- Recording of today's webinar will be posted within one week
- Slides will be posted with recording
- The recordings and handouts for all previous webinars are available on our website: <https://archives.utah.gov/recordsmanagement/>
- Survey for today's webinar, link in chat box below



Join us next week...



The Proper Care and Feeding of Your IT Employees

by James Duckett, City of St. George

James will share his experience and insights on how to build a team effort between records managers and IT.

Tuesday, April 25, 2017. Noon to 1:00 p.m.

